UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**No. 4-16-CR-00484-CEJ**
v.	)	
	)	
MANISH SUTHAR, P.C.,	)	
	)	
Defendant.	)	

MANISH SUTHAR, M.D., P.C.'S SENTENCING MEMORANDUM

COMES NOW Manish Suthar, M.D., P.C. ("MSPC"), by and through its undersigned counsel and, pursuant to the Court's Order dated November 8, 2016, hereby submits its Sentencing Memorandum requesting that the Court adopt the recommendation of the parties to impose a fine of $10,000 given MSPC's limited financial ability to pay restitution in this case. MSPC has agreed to pay full restitution of $166,564.55, which is significantly more than the net worth of MSPC of $70,000 as of November 17, 2016. MSPC, due to the actions of Dr. Suthar, has borrowed funds that, with the limited cash resources of MSPC, would permit MSPC to pay the required restitution. However, that will completely deplete and significantly exceed MSPC's funds, and therefore, pursuant to Section 8C3.3(a) of the Sentencing Guidelines, MSPC requests, with the concurrence of the Government, that a variance be awarded to reduce the fine due to MSPC's inability to pay restitution to $10,000.

At the outset, MSPC and Dr. Suthar apologize to the Court for the misconduct in submitting claims for prolotherapy services. This was a mistake in judgment and should not have occurred. MSPC and Dr. Suthar significantly regret this misconduct and apologize to the Court for submitting claims for services that were not subject to reimbursement.

1. Background of MSPC.

MSPC was created in May 2003 and originally operated for over a decade under agreements with Barnes Jewish Hospital ("BJC"). Under the agreements, BJC employed and supervised the staff and provided the equipment required for procedures that were performed by MSPC. MSPC leased the space and made payments to BJC for services of the employees provided by BJC who also provided healthcare coverage and other benefits to the employed staff. The clinic was located on the campus of Barnes West in Creve Coeur until September 2013. MSPC provided treatment of outpatient, non-surgical or orthopedic spine and pain conditions.

In October 2013, MSPC relocated to Chesterfield, Missouri and the BJC relationship was terminated. After October 2013, MSPC operated independently of BJC with its own equipment and employees. The services provided by MSPC remained the same. MSPC continued to treat non-surgical or orthopedic, spine and pain conditions along with interventional pain management procedures.

Prior to the instant offense, neither MSPC nor Dr. Suthar had any regulatory or criminal issues or history.

2. The Nature of the Offense.

For approximately 3% of MSPC's practice, MSPC provided prolotherapy services. Services were provided as an option only after traditional pain relief procedures such as therapy, steroid injections or surgery had been tried and failed to provide relief. Patients receiving prolotherapy were routinely provided literature on the nature of the procedure and advised that prolotherapy was not an FDA-approved service and was considered experimental. For many patients, prolotherapy provided relief; for others, it did not.[1] Once Dr. Suthar was notified by the FBI of the investigation, he ceased providing prolotherapy or having bills for reimbursement submitted.

MSPC billed prolotherapy for reimbursement by Medicare and other insurance payors. A limited portion of the claims were paid. Prolotherapy was not a reimbursable service and should not have been billed to Medicare and the payors. As a small number of the treatment bills were paid by Medicare and insurance, MSPC thought that such bills could be submitted for payment. The significant number of denials, however, should have made clear to MSPC that prolotherapy should not have been billed and was not reimbursable. MSPC failed to adequately monitor the billing for prolotherapy and should have ensured that prolotherapy claims were not billed to Medicare and the payors.

Dr. Suthar has been in contact with the Centers for Medicare and Medicaid Services ("CMS") and a Corporate Integrity Agreement has been executed that requires that (1) Dr. Suthar and his staff receive training; (2) coding and billing are performed correctly; and (3) auditing of the billing be performed by an independent firm on a regular basis. The Corporate Integrity Agreement is currently in effect and being monitored by CMS.

3. Related Fine Considerations.

As documented in the Plea Agreement, MSPC has agreed to pay full restitution to Medicare and the private insurers in the amount of $166,564.55.[2] This amount significantly

[1] Attached as Exhibit A are some indications that some patients received relief from prolotherapy when other treatments had failed to provide relief. Names have been redacted to protect patient information but the originals will be available at sentencing for the Court to review. These are provided as background regarding Dr. Suthar's care and does not excuse the improper billing and is not intended to excuse it.

[2] The amount paid was $178,564.55 but $12,000 was previously recouped by Medicare leaving a restitution balance of $166,564.55.

exceeds the net worth of MPSC which the Presentence Report shows to be $70,000. Recognizing that MSPC's conduct should not be condoned and MSPC should not retain any funds from its alleged misconduct, MSPC has agreed to make the restitution even though it far exceeds the financial ability of the practice. To this end, MSPC and Dr. Suthar have borrowed money in the amount of $120,000 to effect the restitution.[3] MSPC is prepared to make payment of the restitution at sentencing along with the payment of the Special Assessment.

As the Presentence Report shows, MSPC plainly does not have the assets to pay the restitution but for the borrowings arranged by Dr. Suthar. Section 8C3.3 of the Sentencing Guidelines specifically provides for a reduction in the fine "to the extent imposition of such fine would impair its ability to make restitution to victims." Here, but for the actions of Dr. Suthar, the Defendant, MSPC, would have no ability to make restitution. The ability to make final payment for restitution will be undermined and put at risk to the extent a fine is imposed beyond that recommended by the parties.

Dr. Suthar hopes to continue his practice. However, MSPC's financial ability is limited, particularly given that Dr. Suthar has agreed to a Corporate Integrity Agreement which will impose additional and significant compliance obligations and expenses on Dr. Suthar due to third-party auditing. Nonetheless, Dr. Suthar hopes his practice will be able to continue and he will be able to continue to service his patients. It is for this reason that Dr. Suthar and MSPC has gone to the extent of borrowing funds to make the necessary restitution.

4. Remaining Factors.

Dr. Suthar has built and maintained a small independent practice utilizing his skills and expertise to treat patients for pain. Frequently, Dr. Suthar is referred patients who

[3] The loans were made to the practice by Dr. Suthar's two brothers in the amount of $40,000 each, as well as Dr. Suthar has borrowed on his life insurance for the remaining amount.

have not found relief from traditional medicine or from their internists and need specialized pain services. Dr. Suthar's practice is to address his patients' needs and turned to prolotherapy only after all services such as cortisone injections, physical therapy or surgery had been considered and failed to provide relief.

Dr. Suthar's practice was to explain prolotherapy and he notified his patients that the service was experimental and not approved by the Food and Drug Administration. Only a small fraction of Dr. Suthar's patients received prolotherapy. As set forth in the Presentence Report, the total receipts for prolotherapy and related services such as fluoroscopy was $178,988.55 over a seven-year period. On an annual basis, the receipts were approximately $25,000 which constituted a small fraction of MSPC's receipts.

Nonetheless, MSPC should not have billed for the services or been paid for those services. Dr. Suthar ceased providing the services in October 2013 after being contacted by the Federal Bureau of Investigation. At that time, Dr. Suthar halted submitting claims for reimbursement for prolotherapy services. MSPC was on notice that prolotherapy services were not typically paid by either Medicare or insurance payors and should not have submitted any claims for prolotherapy services.

Dr. Suthar is interested in continuing to practice medicine and treat his patients. To this end, he has been in contact with the Centers for Medicare and Medicaid Services ("CMS") and has executed a Corporate Integrity Agreement that requires Dr. Suthar's practice to provide training, comply with all requirements for proper billing, and have his claims audited over a three-year period. Compliance with the Corporate Integrity Agreement will be costly but nonetheless is a commitment Dr. Suthar has made in the hope of continuing to practice and treat his patients.

MSPC and Dr. Suthar are committed to complete and total compliance with the law. MSPC and Dr. Suthar are confident that there will be no further violations or errors in billing and payments for reimbursement. MSPC and Dr. Suthar understand that it is MSPC's obligation to ensure that billings are correct and not simply to submit claims in the expectation that Medicare or a payor will separate valid from improper claims.

As stated at the outset, MSPC and Dr. Suthar apologize for MSPC's conduct and are remorseful. It is Dr. Suthar's hope that he will be able to continue to practice medicine notwithstanding this violation. To this end, MSPC requests, consistent with the request of the parties in the Plea Agreement, that the fine be reduced and a variance granted given the limited financial assets of MSPC.

Respectfully submitted,

GREENSFELDER, HEMKER & GALE, P.C.

By: /s/

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Manish Suthar, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2017, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to all counsel of record.

/s/
Richard Greenberg

December 11, 2013

Dr. Manish Suthar
13710 Olive Blvd.
Chesterfield, MO. 63017

SUBJECT: Prolotherapy

Dear Dr. Suthar,

I am writing you to inform you of how successful the prolotherapy was to my shoulder. As I am sure you recall I had a damaged rotator cuff and partially detached tendon on my right bicep. At this time you recommend the prolotherapy , consisting of approximately eight injections. The results were fantastic, I have no pain, full mobility, as well as full strength of my right arm and shoulder.

I would highly recommend this treatment to anyone. If any one would like to discuss my results, I would be happy to share my success story with them.

I can be reached by phone at

Thank you so much for all your help.

Sincerely,

Dr. Suthar,

As requested a few months ago (and I apologize for taking much longer than I would have liked to forward this letter to you), I am endorsing both you as a physician and prolotherapy as a joint treatment. I have been struggling with lower back pain for roughly 19 years. The last three years have arguably been the most difficult. I have seen multiple orthopaedists, pain-management physicians, and had numerous x-rays, CT scans and MRIs on my back, yet was not able to find any measurable relief...until I became your patient.

After undergoing a 15-month prescribed prolotherapy treatment plan by you, the pain level in my sacroiliac joint and lower back has become manageable, whereas previous treatments failed. The treatment program took a few months to realize any results, but you were consistent in your declarations of such. Around the seventh month, the intensity of sharp, acute pain felt in my lower back tended to decrease and continued doing so throughout the remainder of the treatment plan. As of now, the pain level has decreased to a point where normal physical activities are no longer avoided. Some pain is still present but not to the degree it was before the prolotherapy.

Lastly, I want to commend the staff at your office. While I cannot recall the names of the ladies at the front desk, they were always cordial and prompt when I entered the clinic. Your nurse, Gabrielle, was not only professional; she was also a nice lady who shared stories about her family with me on a couple of occasions. Your surgical/radiology assistant, Jody, was compassionate during and after the procedures, and also shared stories with me at times. These interpersonal encounters with you and your staff provided substance and a milieu of easiness to the clinical/surgical experience – one which has been a dry and glib experience in previous doctor visits for me.

Thank you for the time and expertise you have provided me. Your skills as a surgeon, the interpersonal skills demonstrated by you and your staff, and the accurate information regarding my treatment plan have led me to recommend your services to others struggling with chronic back pain.

Sincerely,

Subject: Testimonial From

From:

To: suthar63141@yahoo.com;

Date: Tuesday, September 20, 2011 8:16 PM

I am writing this Testimonial about how my Life Has totally changed since I've been under the Medical care Of Dr Manish Suthar Pain Prevention Center and His Physician's assistant Mary Beth Johnson.

It all started back in 2006 when I was feeling some intense discomfort in my back.My personal Physician had me take X-Rays and I was diagnosed with a Bulging Disc at my L-3 and osteo-arthritis. I was instructed to take ibuprofen and just consider it a part of growing older.

August of 2010, I awakened one Saturday morning with a stiff neck. I attributed it to sleeping funny on my neck. Day by day, the pain became worse. About 2 weeks later I was in so much pain I considered going to the Emergency room. I waited until the next morning and called my Primary Care Physician who set up a Cat Scan with contrast...I was diagnosed as having degenerative disc disease..My C2 through C7 was losing it's padding between the disc& nerves..I was in incredible PAIN!

I was then instructed to have an MRI which I setup immediately.My Primary sent me to a neurologist who explained to me my condition and that I was not,at the current time a candidate for surgery.I was given a prescription Physical Therapy.

Over the next 7 months This process continued but my PAIN became totally unbareable.I was suffering from Depression and Anxiety.My Business ,as a Sales person became next to impossible due to the PAIN!!!! My family said I was not the same person..I was easily agitated & frustrated. I was in such constant Pain that I just can't describe in words.....

A friend of mine referred me to Dr. Manish Suthar Of Pain Management Center. My first appointment was on March 8th 2011..I met Dr Suthar and his Physician's Assistant Mary Beth Johnson...I could tell from my first consultation that I came to the right place.

Dr. Suthar requested additional MRI's, X-Rays & other tests because I had more going on internally than any other Physician was willing to take the time to really hear how much PAIN I was in and how I was truly suffering.Their bedside manner and caring was truly heart felt.They made me feel that I mattered.

They laid out a plan of Pain Management that consisted of the right combination of Cortisone Injections, Physical Therapy, prescribed a Tens unit that I use every evening plus the right regiment of Medications that treated all my Pain from Head to toe.

I am here to share with you my experience as truly positive. I have not felt this GOOD in a long time. My Family says that I am back,I'm my old happy go lucky self again..Back to being a good husband & a loving Father. My friends are enjoying my return..My Business Production in Sales has soared because I am not in the unbearable PAIN that I was under before.As a matter of fact I danced like I've never danced at my daughter's wedding on September 3, 2011. This was all made possible By Dr. Suthar and Mary Beth.

Dr Suthar and Mary Beth are highly recommended if you want your life back and relief from PAIN. When others just don't understand because they are not living in your body they do.

I hope to continue my Pain Management Program because in my eyes they have truly given me my LIFE back.

Best wishes to Dr. Suthar, Mary Beth Johnson and his entire staff for what they have done for me.

Thank You again,

With the Warmest Personal Regards, I Remain
Very Truly Yours,

I am 70 years old and after four back surgeries, I still suffer with chronic back pain in my back & legs. I went to many doctors trying to get relief after my surgeries with no results..

I think their thought was, I had too many surgeries. With that in mind, they did not seem to be that concerned. Most doctors told me I had to learn to live with it. In time my health had deteriated both mentally & physically and I just seemed to just give up. Then one day my sister-in-law told me about Dr. Suthar and that a colegue from her work had a very serious accident, and after years of his being out of work, went to see Dr. Suthar. With great results, he was able to return to his job.

To keep peace with my sister-in-law I decided to try him I was amazed by his interest in helping me. After a thorough exam and studying my Ex-rays, MRI and medical records, he thought that he could help me.

After two visits, I had a quality of living I did not have for years. I felt like he saved my life. I have continued going to Dr.Suthar, and have recommended him to others and have had great results.

I have found that his assistant Mary and his complete office staff are the most caring, compassionate and efficient staff I ever experienced.

My name is . I'm a Captain for a major US airline, and Dr. Manish Suthar quite simply has saved not only my well being, but also my career! Two and a half years ago, I was rough-housing with my toddler. While laying face down on the floor, my child jumped and landed with both knees in the middle of my back. I was quite sore for several days, but the pain disappeared. I went on with life as if nothing had happened.

About a month later, I laid down in bed one night and had a sudden onset of chest pain accompanied by muscle tightness, numbness, and tingling in my left arm and leg. I spent twenty-four hours in an Emergency Room only for the doctors not to find anything clinically wrong with me. This would be my story for the next eighteen months. I had suddenly lost the career I had spent decades building, as well as most of my ability to function normally in daily activities.

This is where my story gets frustrating. For more than a year, I bounced from one specialist to another. I had various body parts scanned and tested from head to toe. Doctors would order a test, and then simply dismiss me a month later when the test was negative, offering no further help or guidance. My primary physician had all but made up his mind that I was simply a hypochondriac who he wasn't going to be able to help. I parted ways with my doctor and started looking for alternate routes.

I eventually found a Chiropractor who suspected all of my symptoms were being caused by the injury I sustained while playing with my child. He believed I had a rib joint near my spine that was damaged, and the massive inflammation surrounding the joint was causing all of my issues. He was right! For six months I lived on an icepack to reduce the inflammation while he attempted to keep the rib in place for my body to heal the joint. He was able to reduce my symptoms, but ultimately my body was never able to heal the rib joint on its own. A couple days of normal activity and I would flare back up and find myself back where I started. After my body failed to heal itself, my Chiropractor referred me to Dr. Manish Suthar.

When I met Dr. Suthar, I was immediately relieved to learn he is unlike every other doctor I had been exposed to. Quite simply, he not only listens... but he HEARS his patients. He was as invested in my health as I was. What a change from the rest of the medical community that would take thirty seconds to not really hear my story and then shuffle me off for another expensive test.

Dr. Suthar recommended that we try a procedure called Prolotherapy. It was a series of injections designed to repair the ligament damage in my rib joint. It was a slow process. He diligently worked with me for more than 12 months of injections, finding that I had ultimately sustained damage to three different rib joints. Sometimes it was two steps forward followed by two steps backwards, but he never quit on me. Every time I saw him, he met me with the same patience and ability to really hear and understand what I was saying about my body.

It has been a very long road, but today I am near the end of my recovery. Dr. Suthar has guided me to the top Physical Therapist in the St. Louis region. With both of their expertise, I am now close to a full recovery. I have regained the ability to step back into my life, and live it to its highest potential.

Dr. Suthar... THANK YOU!